Resolving Workers' Compensation Disputes According to Statutory Time Lines: Policy Options for Consideration

Prepared by staff of the Florida House of Representatives
Committee on Insurance
Rep. Stan Bainter, Chairman
October 22, 1999

Florida House of Representatives

John Thrasher, Speaker

Committee on Insurance

Consumer Affairs Council

Stan Bainter
Chair

Leslie Waters
Vice Chair

October 22, 1999

The statutory process for resolving workers' compensation disputes is multi-faceted. The process includes both an informal and formal process, with time lines specified for each. These time lines are intended to result in the efficient resolution of disputes--to avoid unnecessarily lengthy and costly proceedings.

During the 1999 Session, the Legislature considered, but did not enact, several measures to bring the actual time frames more in line with those required in statute. In response, I directed committee staff to examine the dispute resolution process in greater detail, focusing specifically on the extent to which the actual length of time consumed in resolving disputes meets the statutory time lines.

This report, prepared by Robert Wolfe, Jr., attorney for the Committee on Insurance, is an excellent work product. In addition to several key findings, the report includes numerous policy options for legislators to consider.

Please do not hesitate to contact the committee staff if you have questions or comments concerning this report.

Sincerely,

Stan Bainter, Chair
Committee on Insurance

SB:bi

402 South Monroe Street Room 406, House Office Building Tallahassee, Florida 32399-1300 (850) 414-7365

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In the workers' compensation act, the Legislature has expressed the intent that the workers' compensation system be self-executing, resolving disputes without undue expense, costly litigation, or delay in the provision of benefits. Statutory time lines exist, at least in part, to achieve this result. The purpose of this report is to: (1) determine if the statutory time lines for resolving workers' compensation disputes are being met and, if not, offer reasons why practice differs from statute; and (2) identify policy options for Members to consider.

Key Findings Contained in the Report

1. From beginning to end, dispute resolution takes an average of 268 days -- more than twice the 120 days allowed in statute. However, staff estimates only up to 15 percent of employees complete the entire process. Apparently, 85 percent of employees exit the process in 163 days or fewer by settling their case prior to or during state mediation; they resolve their disputes 13 to 43 days longer than the statute contemplates for completing the entire process. Delays in proceeding through the formal process may be foreclosing the opportunity for a formal hearing and forcing more settlements.

2. The number of employees filing petitions for benefits (petitions) has remained stable, yet the number of petitions filed annually has more than doubled since the time lines were enacted in 1993. Also, the average number of issues per petition rose from 2.32 in 1994 to 3.28 in 1998 -- a 41 percent increase.

3. Numerous statutory requirements relevant to the process have not been met or implemented as presumably intended by the Legislature.

Table 1. Summary of Time Line Findings

Step	Statutory	Actual
1-A (Employee Assistance Office) / 1-B (managed care grievance)	30 days / 60 days	25 days / 30 days
2 (petition to mediation)	21 days	138 days
3 (mediation to pretrial hearing)	10 days	30 days
4 (pretrial hearing to final hearing)	45 days	45 days
5 (final hearing to final order)	14 days	30 days
TOTAL	**120 / 150 days**	**268 / 273 days**

Policy Options for Members to Consider

A. CHANGE EXISTING LAW	
1. Enact no legislation; exercise oversight authority to ensure compliance with law	2. Create sanctions for violations of current law
B. REVISE INFORMAL DISPUTE RESOLUTION	
1. Eliminate the requirement of informal dispute resolution prior to filing petition	5. Restructure EAO functions (Texas model)
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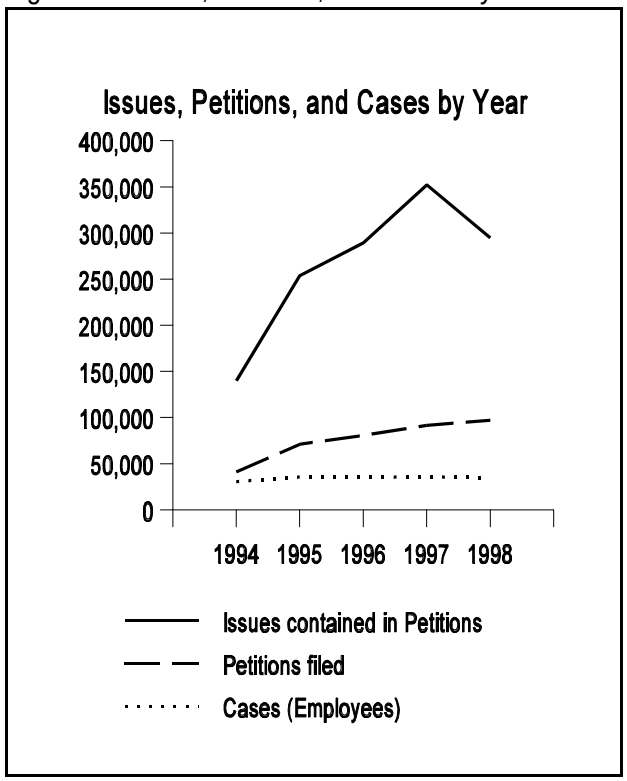
I. Introduction

A. Legislative Intent for Workers' Compensation

In the workers' compensation act, the Legislature has expressed the intent that the workers' compensation system resolve disputes without undue expense, costly litigation, or delay in the provision of benefits.

However, the workers' compensation system is not always self-executing and it does not always deliver benefits in a quick and efficient manner. Disputes frequently arise between employees and employers or carriers, causing persons from outside the system -- e.g., attorneys and judges of compensation claims -- to become involved. These disputes often result in costly, protracted litigation, which delays the delivery of benefits to injured employees. The workers' compensation system has several mechanisms designed to deal with disputes, including informal dispute resolution through the EAO process and grievance procedures established by managed care arrangements and formal dispute resolution with a Judge of Compensation Claims.

Figure 1 - Issues, Petitions, and Cases by Year



B. Creation of Statutory Dispute Resolution Time Lines

In 1993, the Legislature enacted numerous reforms to the workers' compensation system. Included were a series of reforms designed to reduce litigation and expedite the formal dispute resolution process, including the enactment of specific time frames for resolving disputes. The time lines specify when various steps in the process are to occur, including the EAO process, the filing of the petition for benefits, mediation, and the final hearing. At the time the Legislature designed these time lines, the Division of Workers' Compensation (Division) within the Department of Labor and Employment Security received approximately 63,000 applications for hearing (the precursor to the petition for benefits) annually. In 1994, the first year after the reforms, 41,268 petitions were filed by 30,400 employees. However, in 1995, 70,837 petitions were filed by 35,841 employees. Three years later, in 1998, the number of employees in the formal dispute resolution process was actually lower than in 1995 (35,003), but the number of

petitions filed by those employees rose to 96,791.[1] Moreover, according to the Division, the number of issues raised in each petition rose from an average of 2.32 issues per petition in 1994 to an average of 3.28 issues per petition in 1998 -- a 41 percent increase in four years.

The report's findings relating to the specific statutory time lines are displayed in table form in Section II. This table (Table 2) breaks the dispute resolution process down into 5 steps. The report's findings regarding other related statutory requirements are contained in Section III.

C. Purpose of the Report

The purpose of this report is to examine the extent to which the statutory dispute resolution time lines are being met in practice and, where they are not, to identify the reasons why practice differs from statute. Committee staff collected data from the EAO, the Agency for Health Care Administration, and the Office of the Judges of Compensation Claims, and interviewed system participants, including claimant and defense attorneys, carriers, representatives, of managed care arrangements, and Judges of Compensation Claims.

Many factors influence the efficiency of the dispute resolution process, some of which can be documented more readily than others. One factor meriting a separate study is the role attorney compensation plays in resolving disputes in an efficient and timely fashion. To some participants, Florida's system for compensating attorneys discourages claimant attorneys from resolving issues through the EAO process, and encourages claimant attorneys to flood the EAO with numerous issues and file multiple petitions rather than consolidating issues. Because attorney's fees are so closely linked to the dispute resolution process, the report does include at least some reference to attorney's fees in offering policy options available for consideration by the Members.

[1] To a certain extent, workers' compensation cases must be taken up "piecemeal" -- i.e., via separate claims -- because an employee's entitlement to benefits mature at different times during the employee's recovery. See e.g., Hunt v. Int'l Minerals and Chemicals Corp., 410 So.2d 640 (Fla. 1st DCA 1982) (noting that workers' compensation cases, unlike personal injury litigation, can engender successive issues as to medical treatment, the entitlement to temporary benefits, and the entitlement to permanent total disability benefits, as well as other issues). However, workers' compensation litigation has always been of a piecemeal nature -- therefore, that alone, cannot account for the dramatic rise in the number of petitions filed per case since 1993.

II. Comparison of Statutory Requirements and Actual Practice in Workers' Compensation Dispute Resolution

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice

Process Step	Statutory Requirements	Actual Practice
Step 1-A **Request for Assistance / Employee Assistance and Ombudsman Office**	**Statutory Time Line: Within 30 days** The Employee Assistance Office (EAO), created by the Legislature in 1993 within the Division of Workers' Compensation (Division), is the first step in the dispute resolution process. The purpose of the EAO is to decrease costly and time-consuming litigation. The EAO (through the filing of a Request for Assistance) assists employees in resolving disputes with their employer or carrier. It also provides information to injured employees, employers, carriers, and health care providers. To resolve disputes, the EAO may compel parties to attend conferences in person or by phone. It also has the authority to assign an ombudsman to assist the employee in resolving the dispute. If the dispute is not resolved in 30 days, then the EAO may assist the employee in preparing a petition for benefits (petition) to be filed with the Division for resolution through a formal litigation process with a Judge of Compensation Claims (JCC). By law, an employee may not file a petition for benefits unless the employee first exhausts the EAO's informal dispute resolution process. Claimant attorney's fees do not accrue during the EAO process. Claimant attorneys can only collect a fee after a petition has been filed. If a claimant attorney facilitates resolution of a dispute during the EAO process, the employer or carrier cannot be compelled to pay any attorney's fees.	**Actual Time: 25 days (average)** The EAO meets the statutory time line for closing Requests for Assistance within 30 days. However, the EAO's resolution rate is very low, and the amount of time spent on each Request for Assistance is small. Reasons for this include: (1) over 90 percent of Requests for Assistance are filed by attorneys who, by law, cannot recover attorney's fees until after a petition for benefit is filed; (2) issues are raised which are not ripe (e.g., death benefits requested when the claimant did not die); (3) issues are raised for which the EAO does not have jurisdiction (e.g., attorney's fees requested by claimant attorney); (4) "shotgun" claims filed requesting numerous benefits which are not due and owing; and (5) carriers' potential awareness of a dispute since the law does not require Requests for Assistance to be provided to the carrier. The EAO's workload is illustrated by the following statistics: <u>Annual Statistics for Calendar Year (CY) 1998</u> Total # of Requests for Assistance filed = 118,142 Total # of issues raised in Requests for Assistance = 458,788 Total # of EAO specialists = 88 Avg. # of Requests for Assistance / issues handled per specialist per year = 1,343 / 5,214 Total # of issues resolved = 31,394 (out of 458,788) Requests for Assistance resolution rate = 18.3 percent Issue resolution rate = 6.8 percent

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice

Step 1-B **Managed Care Arrangement Grievance Process**	**Statutory Time Line: Within 60 days** According to s. 440.134(1)(d), F.S., grievance means "dissatisfaction with the medical care" provided by an insured's managed care arrangement, expressed in writing by an injured worker. The Agency for Health Care Administration requires all managed care arrangements to have a procedure to handle complaints and grievances from injured employees. Managed care arrangement grievance procedures are required to be described in writing (including explaining the process for filing a grievance) and must provide for the timely review of grievances by decision makers with authority to take corrective action. Florida law requires employees to exhaust these grievance procedures before filing a petition with the Division. According to Agency for Health Care Administration Rule 59A-23.006, Florida Administrative Code, the grievance process must be completed within 60 days of receipt of the grievance by the managed care arrangement, unless the parties agree to an extension. If information from outside the service area is needed to process the grievance, then an additional 30 days is allowed. Under Florida law, an employee with a medical dispute is not required to exhaust this grievance process before filing a Request for Assistance with the EAO. According to the EAO, these procedures often occur simultaneously. Section 440.134(15)(g), F.S., requires managed care arrangements to report grievance procedure activities to the Agency for Health Care Administration no later than March 31 of each year. This report must include the "number of grievances filed in the past year and a summary of the subject, nature, and resolution of such grievances."	**Actual Time: 30 days (average)** According to the Agency for Health Care Administration, many managed care arrangements do not report grievance activity as the statute requires and, of the ones that do report, they do not report the average resolution times for grievances processed. Thus, to obtain an average resolution time for these grievances, staff contacted grievance coordinators for several managed care arrangements and several claimant attorneys.[2] According to the managed care arrangements contacted, grievances are resolved on average in 30 days -- well within the 60 day requirement in rule. Claimant attorneys reported a different experience, however. According to some claimant attorneys, grievances are frequently returned or not acted upon at all. This difference in experience stems from varying interpretations of the term "grievance." The managed care arrangements indicate that attorneys routinely file grievances over medical issues in situations where benefit or treatment has never been requested of the medical care coordinator. The managed care arrangements contacted do not consider these to be grievances -- instead they see them as "first requests," which are not yet disputes. Accordingly, some managed care arrangements send "first requests" back to attorneys telling them to request the medical care from the medical care coordinator. Others indicated they send "first requests" directly to the medical care coordinator for a determination as to whether it is medically necessary. Then, if the managed care coordinator denies the request, the managed care arrangement treats it as a grievance. Some claimant attorneys contacted consider any dissatisfaction with medical care, whether in dispute or not, to be a grievance. Some claimant attorneys asserted that this interpretation is not inconsistent with the statutory definition of "grievance," which does not expressly require there to be a dispute. In an attempt to clarify what constitutes a "grievance," the Agency for Health Care Administration is developing a rule which (in the 3rd draft revised 9/1/99) would require the claimant to request the desired medical care from the MCC prior to filing a grievance.

[2] Managed care arrangements contacted include Humana (MCA for the State of Florida), Disney, Travelers, Genex, CorVel, MetroComp, and Entricorp.

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice

Step 2 **Petition for Benefits to Mediation**	**Statutory Time Line: Within 21 days** After informal dispute resolution procedures within the grievance process and the EAO process have been exhausted, the employee may file a petition for benefits with the Division. This marks the beginning of the formal dispute resolution process presided over by a Judge of Compensation Claims (JCC). The filing of the petition sets in motion a statutory time clock for the various stages of the litigation process. The first procedural event in the litigation process is mandatory mediation. According to s. 440.25(1), F.S., the JCC must hold the mediation conference within 21 days of the filing of the petition.	**Actual Time: 138 days (average)** In actual practice, adherence to this time requirement is extremely rare. According to the Office of the Judge of Compensation Claims, the average time from the filing of the petition for benefits to scheduled mediation is 138 days -- 117 days longer than the statute contemplates. Staff interviews revealed numerous reasons for the departure from statute. First, petitions are required to be filed with the Division, not the JCC that will ultimately preside over the case. After receiving a petition, the Division prepares a docketing order, enters all of the issues into a tracking computer, and then forwards it to the docketing judge in the appropriate district. In essence, the Division acts as the "clerk's office" for the Judges of Compensation Claims. According to the Division, this process took as few as 4 days to complete in October 1997, but 34 days as of May 1999. The Division stated this variation is due to the fluctuation in the number of petitions filed and their recent practice of imaging more documents from the petition than they did previously. According to the Office of the Judges of Compensation Claims, this process now takes an average of 17 days. Second, after the Division receives the petition, prepares the docketing order, and enters the issues, it sends the petition to a docketing judge, not the presiding JCC. Under Florida law, a docketing judge (each JCC performs this role for other judges) must review every petition to make sure it meets the specificity requirements set forth in statute.[3] If it does not meet these requirements, it must be dismissed without prejudice -- which means the claimant may correct the deficiency and refile it. According to the Office of the Judges of Compensation Claims, docketing review takes an average of 8 days from the date the docketing judge receives the petition to the date the presiding JCC receives it. Staff interviews revealed that the representations of most participants -- carriers, claimants attorneys, and JCCs -- were that docketing review is not an efficient use of time. Attorneys for carriers believe, and some judges admit, the level of review by docketing judges is cursory. One JCC stated that because of the volume of petitions he receives, he can only spend a minute or two on each petition.

[3] Section 440.192(2), F.S., contains a list of items that a petition must contain to keep it from being subject to dismissal.

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice		
Step 2 (cont'd) **Petition for Benefits to Mediation**		Carriers also criticize docketing review because they believe very few petitions are actually dismissed for lack of specificity. According to the Office of the Judges of Compensation Claims, from July 1998 through June 1999, docketing judges approved 70,730 petitions and disapproved 5,157 (or 6.8 percent). Presiding judges do not even receive the petition until 25 days after it is filed -- 4 days after the statutory limit for holding mediation -- due to the time consumed by the Division in processing petitions and JCC completion of docketing review. Third, the parties' need to gather information about their case prior to mediation may be contributing to the delay. Attorneys for both claimants and carriers stated they routinely conduct depositions, talk to witnesses, review medical records, and interview health care providers prior to mediation. These participants noted that without an understanding of their case, mediation is premature. However, in 1998, according to the Office of the Judges of Compensation Claims, 7,353 cases settled prior to mediation -- not much lower than the number of cases that settled at a concluded state mediation, which in 1998 was 8,888 (representing a 52.6 percent settlement rate out of the 16,908 total concluded state mediations held in 1998). These data suggest a case is just as likely to settle prior to mediation as it is to settle at mediation. This could mean that extensive up-front discovery does not impact the likelihood of settlement. However, it is equally possible that cases settling prior to mediation are merely the factually simple cases, while the more complex ones require mediation to reach settlement. Staff attempted to determine the percentage of employees that completely settle their case, either before or during state mediation, and, accordingly, do not continue through to a final hearing. Neither the Division nor the Office of the Judges of Compensation Claims could provide an exact answer. However, by dividing the number of final orders entered by judges in CY 1998 (2,760) by the number of employees submitting petitions in CY 1998 (35,003), staff estimates that around 7.8 percent of employees go through to a final hearing. This figure is not far from the experience of one JCC who estimated that 10 to 15 percent of employees go to a final hearing.

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice		
Step 2 (cont'd) **Petition for Benefits to Mediation**		In addition, staff contacted the Division to determine the success rate of mediation prior to it becoming mandatory in 1993, but, according to the Division, no data are available. Thus, staff could not determine if the current success rate of 55 percent for mandatory mediation is an improvement over voluntary mediation. For instance, more parties may now participate in mediation than before 1993, but the success rate per mediation prior to 1993 may have been much higher. Thus, it is possible that just as many cases settled at mediation before 1993 -- only then without the expense of paying 31 state mediators. For example, assume there are 100 cases in the system. Under mandatory mediation, all 100 cases must go to mediation. With the current success rate of 55 percent, this means 55 cases settle at mediation. However, under voluntary mediation assume only 75 of the 100 cases go to mediation. But, assuming voluntary mediation had a 75 percent success rate, this would mean that roughly 56 cases settled at voluntary mediation -- the same result as mandatory mediation. Fourth, mediation may be delayed because of: - the high volume of petitions (92,383 in FY 1998/99) and number of claimants in the system (35,003 in CY 1998) compared to the number of mediators (31), mediations held (17,484 for FY 1998/99),[4] and case load per mediator per year (564); and - the difficulty in scheduling all parties to a mediation (e.g., mediator, claimant attorney, defense attorney, adjuster, and claimant).

[4] Using these numbers, one mediation is held for every 5.2 petitions filed. The reason for this disparity is due to the fact that some petitions are resolved prior to mediation, some petitions are voluntarily dismissed, some mediations are waived by the Chief Judge, and many mediations involve multiple petitions.

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice		
Step 3 **Mediation to Pretrial Hearing**	**Statutory Time Line: Within 10 days** According to Florida law, "[i]f, on the 10th day following commencement of mediation, the questions in dispute have not been resolved, the judge of compensation claims shall hold a pretrial hearing." At the pretrial hearing, the parties stipulate to facts not in dispute, list witnesses to be called at trial, dispose of outstanding motions, and the JCC sets the date for the final hearing.	**Actual Time: 30 days (average)** Some Judges of Compensation Claims interpret the statute to mean the pretrial hearing must be held within 10 days of mediation. Other judges interpret the statute to mean that if the case does not settle within 10 days of mediation, the JCC shall thereafter hold a pretrial hearing, but not necessarily within 10 days. The House Commerce Committee's Final Bill Analysis and Economic Impact Statement for Senate Bill 12-C, which created this provision, supports the former interpretation when it states that the bill "[r]equires the judge of compensation claims to hold a pretrial hearing *on the tenth day* following the commencement of mediation."[5] Therefore, some judges schedule the pretrial hearing for 10 days after mediation, but know that they will most likely have to reschedule due to schedule conflicts of the parties. Yet, others schedule the pretrial hearing for a date agreeable to the parties, but not necessarily within 10 days. According to the Office of the Judges of Compensation Claims, the pretrial hearing occurs, on average, 30 days after the mediation is concluded.

[5] House of Representatives, Committee on Commerce, Final Bill Analysis and Economic Impact Statement for SB 12-C, December 1, 1993, p.13 (emphasis added).

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice		
Step 4 **Pretrial Hearing to Final Hearing**	**Statutory Time Line: Within 45 days** Section 440.25(4)(b), F.S., requires the final hearing to be held and concluded within 45 days after the pretrial hearing. Within this time frame, the JCC is required to provide the parties at least 30 days to conduct discovery prior to the final hearing.	**Actual Time: 45 days (average)** According to the Office of the Judges of Compensation Claims, this time requirement is usually met in practice. However, staff conversations with individual judges revealed that continuances of the final hearing are necessary sometimes. Florida law provides that continuances of the final hearing may be granted, but only upon a showing by the requesting party that the need for a continuance "arises from circumstances beyond the party's control." Judges contacted indicated that they require the party desiring a continuance to file a motion and demonstrate some "good cause" for the continuance.[6] According to one, the most common reason for requesting a continuance is that a party is not prepared for trial. In this particular judge's experience, about 80 percent of the time it is the claimant side that requests a continuance on this ground. One frequently mentioned reason for not being prepared for trial is the difficulty associated with setting and taking doctors' depositions. Some judges indicated that it is not uncommon for it to take 60 days to schedule a doctor for a deposition. In addition, some doctors may cancel scheduled depositions, resulting in further delay. Some participants contacted believed that timely-held final hearings are possible only because delays on the front end (e.g., mediation) enable parties to conduct some of the necessary discovery prior to the pretrial hearing. Some thought that if mediation were held within 21 days and pretrial held 10 days after that, there would not be nearly enough time to complete discovery within the 45 days allowed by statute before final hearing.

[6] A showing of "good cause" is required to be made by motion for a continuance under Rule 4.075(c)(1), Florida Rules of Workers' Compensation Procedure.

Table 2. Workers' Compensation Dispute Resolution Time Lines: Statutory Requirements Compared to Actual Practice		
Step 5 **Final Hearing to Final Order**	**Statutory Time Line: Within 14 days** After the final hearing is conducted, the statute requires the JCC within 14 days to "determine the dispute in a summary manner." However, the statute does not specifically state that a "final order" shall be issued within 14 days. But, section 440.25(4)(f), F.S., requires a JCC to submit special reports to the Chief Judge whenever a case is not "determined" within 14 days of the final hearing. In describing what must be contained in this report, the statute states there must be an explanation by the JCC "as to the reason for such delay in issuing a *final order*" (emphasis added). This provision seems to equate the term "determination" with the term "final order." Similarly, the House Commerce Committee's Final Bill Analysis and Economic Impact Statement for Senate Bill 12-C, which created the 14 day requirement, provides that the bill "requires a *final order* be issued within 14 days of the conclusion of the final hearing" (emphasis added). See the Additional Statutory Requirements section of this report beginning on page 11 for a more detailed discussion of the statutory requirements relating to special reports for late final orders.	**Actual Time: 30 days** Despite the apparent intention of the Legislature to the contrary, most Judges of Compensation Claims attempt to issue what they call a "summary determination," which is usually in the form of a letter to the parties, within 14 days of the final hearing. The summary determination informs the parties for whom the JCC intends to rule. Then, in most districts, parties each submit proposed final orders to the JCC, which the JCC uses to generate the final order. Based on information reported to the Office of the Judges of Compensation Claims by each JCC, final orders are issued on average 30 days after the final hearing. The time frame for the issuance of final orders is significant not only because it marks the end of the formal process and specifically describes the benefits to which the employee is entitled, but also because it marks the point at which a party may seek appellate review from the First District Court of Appeal. Thus, delays in issuing final orders translates into delays in reaching closure in the litigation process and delays in beginning the appellate process.
TOTALS	**120 Days for Non-Medical Issues / 150 Days for Medical Issues**	**268 Days for Non-Medical Issues / 273 Days for Medical Issues**

III. Additional Statutory Requirements Relevant to the Workers' Compensation Dispute Resolution Process

A. Ombudsman Role of the EAO

STATUTORY REQUIREMENT -- Section 440.191(2)(b), F.S., provides that the EAO, upon receipt of a Request for Assistance, must investigate the dispute and attempt to facilitate agreement between the employee and employer or carrier. Section 440.191(2)(d), F.S., authorizes the EAO to assign an "ombudsman" to assist injured workers in resolving their disputes. If the dispute is not resolved within 30 days, and if the injured worker makes a request, then the Division is required to assign an "ombudsman" to assist the injured worker in preparing a petition for benefits.

ACTUAL PRACTICE -- The EAO employs 88 specialists who attempt to resolve disputes raised in Requests for Assistance. In calendar year 1998, a total of 118,142 Requests for Assistance were filed, containing 458,788 issues. Thus, in 1998, each EAO specialist handled an average of 1,343 Requests for Assistance and an average of 5,214 issues. This means that, in 1998, each EAO specialist could spend, at most, an average of 90 minutes per Request for Assistance (and 23 minutes per issue) attempting to facilitate resolution. In addition, according to the EAO, out of the same 118,142 Requests for Assistance filed, 112,164 -- or 95 percent -- were filed by attorneys.

RELEVANCE TO DISPUTE RESOLUTION -- The Request for Assistance process within the EAO was intended to resolve disputes informally so as to reduce the number of cases and issues entering the formal dispute resolution process.

B. Insurers' Reports to the Agency for Health Care Administration Regarding Grievance Activity

STATUTORY REQUIREMENT -- Section 440.134(15)(g), F.S., requires insurers to report annually to the Agency for Health Care Administration regarding their grievance activities for the prior calendar year. The report must contain the number of grievances and a summary of the subject, nature, and resolution of the grievances. Section 440.134(18), F.S., authorizes the Agency for Health Care Administration to suspend the authority of an insurer to offer a managed care arrangement if "the insurer has violated any lawful rule or order of the agency or any provision of this section."

ACTUAL PRACTICE -- According to the Agency for Health Care Administration, approximately one-fourth of all managed care arrangements do not file the required grievance activity report with the Agency for Health Care Administration. Moreover, the Agency for Health Care Administration indicated that managed care arrangements filing reports frequently do not provide information relating to the time expended in resolving grievances. In the past, the Agency for Health Care Administration's response has not been to fine insurers; rather, it has sent letters to noncompliant insurers notifying them that it has not received the report. In cases where the insurer still did not submit a grievance activity report, the Agency for Health Care Administration indicated that it did not have the staff or time to follow up.

Two and a half years after managed care became mandatory, the Agency for Health Care Administration is now proposing rule changes, in part, to improve the quality of the grievance activity reports and compliance with the filing requirements. The proposed rule changes include a reporting form that specifies what is required to be contained in the grievance activity report. The proposed rules also require insurers to report the dates of resolution of the grievances.

RELEVANCE TO DISPUTE RESOLUTION -- The grievance procedures were enacted to facilitate resolution of medical disputes so they do not become petitions, which must be resolved through the formal dispute resolution process. Presumably, grievance activity reports are required to be filed with the Agency for Health Care Administration so it may identify those insurers that are not properly following the grievance procedures, including the time requirements.

C. Waiver of Mediation by the Chief Judge

STATUTORY REQUIREMENT -- Section 440.25(2), F.S., authorizes the Chief Judge to waive the requirement for mandatory mediation. The statute requires the party requesting mediation to file a motion no later than 3 days prior to the mediation, but does not contain any criteria the Chief Judge must consider in determining whether to waive mediation.[7]

ACTUAL PRACTICE -- Contrary to statute, not all parties skipping mandatory mediation are filing a motion with the Chief Judge requesting waiver. In September 1994, the Chief Judge issued an administrative order for District M-South (Ft. Myers) which automatically waives mediation in any case where the mediator is unable to schedule an initial mediation conference prior to the pretrial conference. According to the order, the rationale behind the blanket waiver is that District M-South is receiving petitions "in excess of what any one mediator can mediate." The order cites section 440.25(2), F.S., as the basis for its authority, but this section does not expressly authorize the Chief Judge to waive mediation in cases where it has not been requested by motion.

RELEVANCE TO DISPUTE RESOLUTION -- Waivers of mediation by blanket order may prevent delays in the dispute resolution process because parties are not required to delay the pretrial and final hearings in order to mediate their case. However, waiving mediation in this manner may also be causing delays since parties are proceeding to final hearings in cases where they may have had success in settling their cases had they been forced to attend mandatory mediation.

[7] According to the Chief Judge, there are several types of cases where she will waive mandatory mediation, including cases where: (1) the parties attended private mediation; (2) the dispute centers around a purely legal issue; (3) delay in scheduling mediation unnecessarily delays the entire case; (4) the parties have already reached an agreement; and (5) both parties agree that mediation will not be fruitful. According to the Office of the Chief Judge, for the period of July 1, 1998, to June 30, 1999, 313 requests for waiver were received by the Chief Judge (1.7 percent of the 17,484 mediations held), 174 requests were granted, and 139 requests were denied. The most common reason for granting a waiver, according to the Chief Judge, was that parties had previously mediated the case with a private mediator.

D. Rules of Procedure and Performance Criteria for JCCs

STATUTORY REQUIREMENT -- Section 440.45(5), F.S., passed in 1993, requires the Office of the Judges of Compensation Claims to promulgate "procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office, including, but not limited to, the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decisionmaking, extraordinary fee awards and other performance indicators."

ACTUAL PRACTICE -- To date, no rules have been promulgated. Rather, local rules of procedure are established separately by each of the 18 different districts around the state. Therefore, attorneys for claimants and carriers operating in multiple districts must familiarize themselves with multiple sets of local rules. The lack of uniform rules of procedure among the 18 districts could be responsible for a certain level of confusion and inefficiency on the part of attorneys who practice in multiple districts, which could translate into delays in the dispute resolution process. An ad hoc committee of judges has been established to examine the different procedures from the districts. According to the Chief Judge, the committee is planning to meet in October 1999.

Regarding performance criteria, the Office of the Judges of Compensation Claims has adopted some measures for Performance-Based Program Budgeting such as the number of petitions received, hearings held, orders entered, and appeals affirmed. However, the Office of the Judges of Compensation Claims has not adopted measures relating to the age of pending cases, the timeliness of decisionmaking, and extraordinary fee awards.

RELEVANCE TO DISPUTE RESOLUTION -- Rules of procedure are designed, in part, to increase process efficiency. Rules enable parties to handle their case with a minimum of expense because they know what is expected of them. Rules also permit judges to handle very large dockets since all cases are conducted in the exact same manner. Performance criteria for the Office of the Judges of Compensation Claims enable the Legislature and the Division to track the efficiency and timeliness of the judges.

E. The Expedited Dispute Resolution Procedure

STATUTORY REQUIREMENT -- In 1993, the Legislature enacted a provision whereby cases with claims for benefits of less than $5,000 could be resolved through the use of an expedited dispute resolution process.[8] This statute requires the Chief Judge to "make provision by rule or order for expedited and limited discovery and expedited docketing."[9]

ACTUAL PRACTICE -- To date, no rule or order has been adopted by the Chief Judge regarding expedited and limited discovery and expedited docketing. Rather, Supreme Court Rules 4.105 and 4.9091, Florida Rules of Workers' Compensation Procedure, are the only rules relating to the expedited dispute resolution process. These rules, however, provide that the JCC must give 45 days notice of the final hearing and that the parties be allowed at least 30 days to conduct discovery -- the same time frames provided in statute for the regular dispute resolution process.[10] The only apparent difference between the expedited dispute resolution process and the regular dispute resolution process is that no pretrial hearing is held in the expedited process -- instead parties submit a pretrial outline. Legislators may want to examine this process to determine if it is being implemented in a manner consistent with their intent.

According to the Office of the Chief Judge, parties rarely request the expedited process -- it is used in less than 1 percent of the cases. Reluctance to use this process may stem from the fact that it is not much shorter than the regular process. According to the Office of the Chief Judge, attorneys are reluctant to use the expedited process because of the statutory limitations on the length of the hearing (30 minutes) and on the amount of the claim ($5,000).

RELEVANCE TO DISPUTE RESOLUTION -- The expedited dispute resolution process is presumably intended to unclog the formal process by speedily resolving those cases that involve benefits of less than $5,000.

F. Chief Judge Report on Late Final Orders

STATUTORY REQUIREMENT -- Section 440.25(4)(f), F.S., states that each JCC must submit a special report to the Chief Judge in each case in which the case is not "determined" within 14 days. The statute requires the report to contain the name of the JCC, the names of the attorneys,

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[8] Section 440.25(4)(j), F.S.

[9] Id.

[10] See Rule 4.105(d) and (e), Florida Rules of Workers' Compensation Procedure; section 440.25(4)(a) and (b), F.S.

and an explanation by the JCC for the reason for delay in issuing a "final order." Then, according to statute, the Chief Judge is required to compile these reports into an annual public report for the "Governor, the Secretary of the Department of Labor and Employment Security, the Legislature, The Florida Bar, and the appellate district judicial nominating commissions."[11]

ACTUAL PRACTICE -- According to the Chief Judge, however, only 5 of the 31 judges submit special reports pursuant to this provision. According to the Chief Judge, most judges do not submit these reports because they interpret the law to require them to "determine the dispute in a summary manner" within 14 days of the final hearing, but not necessarily to issue a "final order" within 14 days. As such, these judges believe they are in compliance with the law. Due to the differing interpretations and the relatively small number of judges that submit late order reports, the Chief Judge has never prepared or submitted the annual report required in statute. According to the Chief Judge, to do so would penalize the few judges who interpret the law as requiring a final order to be issued within 14 days of the final hearing, yet fail to issue a final order within that time period.

RELEVANCE TO DISPUTE RESOLUTION -- As discussed in Part II of this report, one interpretation of the law is that judges are required to issue "final orders" within 14 days of the final hearing.[12] If this interpretation were enforced, judges may or may not be able to meet the time requirement. If judges could meet the time requirement, the process would be shortened by an average of 16 days. If judges could not meet the time requirement, then judges would submit special reports to the Chief Judge explaining the reasons for the delay. If the delay is not the fault of the judges, but is the result of some other factor beyond their control, the Chief Judge's annual report will make the Legislature aware of the problem. The Legislature can then consider any necessary changes to the law. As it stands now, however, the Legislature is not made aware of the split of opinion among the judges.

[11] Section 440.25(4)(f), F.S.

[12] See House of Representatives, Committee on Commerce, Final Bill Analysis and Economic Impact Statement for SB 12-C, December 1, 1993, p. 13 ("[The bill] requires a *final order* be issued within 14 days of the conclusion of the final hearing" (emphasis added).

IV. Policy Options for Members to Consider

There are a number of policy options available to Members ranging from making no changes to current law and simply overseeing compliance with current requirements to restructuring the informal dispute resolution functions of the EAO or limiting the way in which medical evidence can be introduced at formal hearings. However, managing litigation in workers' compensation, just as in civil litigation, has always presented significant challenges for the Legislature. Legislating efficiency is inherently difficult in a quasi-judicial process where judges enforce the time frames, attorneys request continuances, and participants have conflicting schedules. Moreover, the goal of efficiency in the dispute resolution process must ultimately be balanced against the right of all employees to due process of law.

A. SHOULD THE LEGISLATURE MAKE ANY CHANGES TO EXISTING LAW?

1. Enact No Legislation; Exercise Oversight Authority To Ensure Compliance with Law -- As discussed above, a number of statutory requirements were enacted in 1993 that were either not implemented at all or may not have been implemented as the Legislature intended. Therefore, the 1993 reforms relating to the dispute resolution process may not have been given an opportunity to function properly. The Legislature, therefore, may wish to exercise its oversight authority and ensure that the statutes are implemented in the manner intended.

2. Create Sanctions for Violations of Current Law -- A variation on this option would be to create sanctions for not meeting the current time frames. An example of a sanction might be forfeiture of a percentage of attorney's fees for attorneys found to have intentionally caused delay.

B. SHOULD THE INFORMAL DISPUTE RESOLUTION PROCESS BE REVISED?

1. Eliminate Requirement of Informal Resolution Prior to Filing Petition -- If the Legislature believes the benefit derived from the EAO's informal dispute resolution process does not warrant delaying the process 25 days, it could eliminate the requirement that parties attempt to resolve their case informally prior to filing a petition. Since more than 90 percent of the Requests for Assistance are filed by attorneys with no personal monetary incentive to resolve the case, it could be argued that the 30 day informal dispute resolution process at the EAO does not serve a useful purpose but merely delays the inevitable filing of the petition.

2. Retain Informal Dispute Resolution Period After a Petition Is Filed -- As a variation on the previous option, the Legislature could eliminate the requirement that parties attempt to resolve their case informally prior to filing a petition, but retain a period for

informal resolution through the EAO after the petition is filed. The Division has expressed an interest in implementing this option through the rulemaking process, but it may need specific statutory authority.

3. Retain and Revise Current EAO Process -- Changes to the EAO informal dispute resolution process could be made which might improve the EAO specialists' chances in resolving disputes. Changes to the process could include: (1) require a copy of the Request for Assistance to be provided to the carrier upon filing so the carrier will be aware of the dispute; (2) create a disincentive or penalty for attorneys filing premature or unripe issues (e.g., require Request for Assistance to be returned to the filer and restart 30 day clock); (3) allow the employee to collect an additional benefit or bonus for resolving the dispute informally in the first 30 days or at the Request for Assistance level; and/or (4) provide an incentive to the insurer for resolving issues at the Request for Assistance level (e.g., grant a credit to the insurer for its Workers' Compensation Administration Trust Fund assessment; calculate rate at which insurer resolves issues at EAO level).

4. Focus EAO on Early Intervention and Provide Resources -- Currently, the EAO (with the participation of several workers' compensation carriers) is implementing an early intervention pilot program using a small number of EAO specialists. Under this program, carriers fax a copy of the notice of injury to the EAO immediately after a workplace accident occurs. Then, an EAO specialist automatically contacts the injured employee by telephone and letter to inform him or her that the EAO is available to provide information and assistance to the employee whenever a question or dispute arises. The EAO believes this program, if implemented state-wide, will result in less attorney involvement and fewer litigated cases. Thus, the Legislature could change the role of the EAO from providing services only after the request of the employee, to contacting and assisting injured employees before disputes arise. This option might entail providing additional resources and positions to the EAO.

5. Restructure EAO Functions (Texas Model) -- Under the current process, the statute requires the parties to attempt resolution of their dispute twice prior to the formal hearing -- first, during the EAO process and, second, during mandatory mediation. Similar to the process in Texas, this option would shift the mandatory mediation conference (including the state mediators) to the EAO. There, parties would be required to mediate all of their disputed issues with an EAO mediator prior to the filing of a petition. The EAO mediator would issue a recommended order at the conclusion of the mediation, which would be binding, pending the decision of a JCC. Thereafter, the only issues which could be brought in a petition would be issues which were raised, but could not be resolved at the EAO mediation. This option would enable the EAO specialists to focus on providing information and assistance to injured workers instead of spending the vast majority of their time performing data entry functions and processing paper.

6. Align the Time Lines for the Grievance and EAO Processes -- In conversation with several managed care arrangements, staff found the average grievance -- not "first request" -- is resolved in 30 days. The current time frame in rule allows for up to 60

days. Based on the average experience of managed care arrangements, the Legislature could shorten the permissible time frame for processing grievances to 30 days, which would align it with the 30-day informal resolution period within the EAO for non-medical issues. Included within this option would be a requirement that a petition be dismissed by the JCC if the EAO or grievance process has not been exhausted.

7. Require Employee to Make Request For Medical Care Prior to Filing a Grievance -- Although the Agency for Health Care Administration is attempting to redefine the grievance process through rulemaking, the Legislature could require employees to first contact the medical care coordinator and have the request denied prior to filing a grievance -- i.e., require there to be a dispute. This could reduce the number of cases where the medical care coordinator is unaware the claimant is dissatisfied with the medical care, and lead to a resolution of issues that would otherwise become grievances and, later, petitions. However, if the Legislature were to adopt this definition, it also might wish to consider establishing a time frame within which the medical care coordinator must respond to the request for care or treatment so that the employee can proceed with a grievance in a reasonable amount of time.

C. WHAT MIGHT THE LEGISLATURE DO TO REDUCE THE TIME EXPENDED IN NAVIGATING THE FORMAL DISPUTE RESOLUTION PROCESS?

1. Procedure

a. Filing Petitions for Benefits

(1) Require Parties to Raise All Ripe Issues -- Some Judges of Compensation Claims and carriers indicated that it is the practice of some attorneys to file separate petitions containing single issues, rather than combining them all into one petition. This may be contributing to the increase in the number of petitions filed since 1993. One option for dealing with this practice would be to require each petition to include a request for *all benefits* which are ripe at the time of the filing of the petition -- i.e., *all benefits* to which the employee is entitled.[13] Additionally, if the JCC were to determine that a subsequent petition contains a benefit which was ripe at the time of a previous petition, the JCC could impose a sanction such as (1) deeming the benefit waived and/or (2) reducing the attorney's fee recoverable for that benefit. This option, however, could cause the relatively small

[13] Section 440.192(1), F.S., provides that an employee may file a petition when the employee has not received a benefit to which the employee "believes she or he is entitled." Pursuant to s. 440.192(3), F.S., a petition is limited to those benefits in default and those "ripe, due, and owing on the date the petition is filed."

number of employees who file petitions without the assistance of an attorney (less than 5 percent of all employees filing petitions) to accidentally waive benefits which were ripe at the time of the filing of the petition, but of which the employee was not aware. As a result, this option could discourage employees from attempting to resolve a dispute without an attorney.

(2) File Petitions with Local JCC -- The Legislature could also require the petition to be filed with the local JCC that would preside over the case. Under this option, the claimant would directly file the petition with the JCC in their locale and provide a copy to the Division for research and tracking purposes. If this option were implemented, two to three weeks could be eliminated from the process. However, since the Division acts as the "clerk's office" for the judges, this option would require a greater amount of paperwork at the local JCC level and might require additional staff at the local JCC offices to meet the increased paperwork demands. Moreover, implementation of this option would require the Division to educate claimants as to the correct locations for filing a petition, since it is not always obvious which venue is correct (e.g., truck driver employed by company in one county, but injured in another).

b. Docketing Review

(1) Eliminate Docketing Review -- If the Legislature determined that docketing review is not an efficient use of time, then it could be eliminated. All judges contacted seemed to support the idea of eliminating docketing review, as did some claimant and defense attorneys. The judges indicated that even if docketing review were eliminated, they still would have the authority to dismiss a petition for lack of specificity on a motion by the employer or carrier. However, defense attorneys and carriers pointed out that the origin of docketing review was due to some participants' perception that judges were reluctant to dismiss petitions for lack of specificity when raised in a motion. Also, docketing review might have grown out of the practice by some carriers of not immediately appointing a defense attorney to a file, which often resulted in carriers missing the 30 day period set forth in s. 440.192(5), F.S., for filing a motion to dismiss based on lack of specificity. Docketing review, then, served to require the judges to examine all petitions for specificity without necessitating the immediate appointment of a defense attorney to represent the carrier and file a motion.

(2) Shift Docketing Review Function to the Division -- If the Legislature wished to retain the automatic review of petitions for specificity, but did not think the judges should be performing this function, then it could require the Division to review the petitions for specificity when it performs its clerk duties. This option would require parties to file petitions with the Division (as they do now), which would eliminate the possibility of implementing a local filing process with the local JCCs. However, if this were implemented, then persons other than JCCs would be

responsible for reviewing and dismissing petitions, which may be objectionable to those who believe that only a JCC should have the authority to dismiss a petition. Also, under this option, system participants would not receive the time savings that would be achieved were docketing review eliminated. Plus, some may argue that this option contravenes the Florida Constitution's access to courts provisions.[14]

c. Require Reports from Each JCC Granting Continuances -- The statute authorizes a JCC to grant continuances when there are circumstances beyond the parties' control. To determine how often and for what reasons judges exercise this authority, the Legislature could require judges to report to the Chief Judge whenever they grant continuances and explain the basis for granting them.

d. Limit Medical Evidence to Medical Reports -- Many system participants claimed the time associated with scheduling and taking doctors' depositions was a major factor contributing to delays and the need for continuances in the dispute resolution process. Doctors' depositions are important in Florida because they are introduced, along with medical records and reports, at the final hearing as medical evidence. In 20 other jurisdictions, however, medical evidence is introduced at the hearing through medical reports only.[15] To remedy the time delays associated with taking doctors' depositions, the Legislature could limit the introduction of medical evidence at the final hearing to medical reports.

e. Permit a JCC to Grant Summary Judgments -- In cases in circuit court where there are no disputed issues of material fact, the judge -- upon motion of one of the parties -- may enter an order of summary judgment. This process is not available to judges in the workers' compensation context. Thus, the Legislature could authorize parties to request by motion that the JCC enter an order of summary judgment in cases where there are no material issues of fact in dispute. An example of a case which would be appropriate for summary judgment would be a dispute regarding the compensability of an injury where the employee and carrier agree to the facts surrounding the injury. In such a case, there would be no need for scheduling and holding an evidentiary hearing, since the only determination to be made is a legal determination by the JCC.

[14] See Article I, Section 21, Fla. Const. ("The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.").

[15] See D. Ballantyne, Dispute Prevention and Resolution in Workers' Compensation: A National Inventory, 1997-1998, Workers' Compensation Research Institute, 50 (1998).

f. Create "Offer of Judgment" / "Proposal for Settlement" Process -- In negligence actions, section 768.79, F.S., and Rule 1.442, Florida Rules of Civil Procedure, describe a process whereby Party A may propose a settlement amount to Party B (e.g., $100,000) and -- if Party B refuses the proposal and Party A gets a judgment for at least 25 percent more than the proposal (e.g., ≥ $125,000) -- Party B may be liable for paying the attorney's fees and costs of Party A after the date the proposal was made. The rationale behind this process is to penalize parties who refuse reasonable settlement offers and, as a result, needlessly use judicial resources. An option could be to implement a similar process in the workers' compensation dispute resolution process. To do so might make parties less likely to refuse reasonable settlement offers.

However, with this option there could be difficulty in determining whether a particular judgment exceeds a settlement offer. In workers' compensation, the litigation often involves determinations that do not have a specific dollar amount tied to it, such as whether an employee's injury is compensable or whether an employee qualifies for a certain benefit. In such cases, there are only two possible outcomes -- yes or no. Thus, the offer of judgment concept might not translate well to the workers' compensation context.

g. Promote Use of Expedited Dispute Resolution -- According to the Office of the Chief Judge, attorneys are reluctant to use the expedited process because of the time limitation on final hearings (30 minutes), the dollar limitation on the claim ($5,000), and the requirement of filing a detailed pretrial outline, which must include a memorandum of law and attachment of evidence. One option would be to remove some of the restrictions on the expedited dispute resolution process. For example, the dollar limitation on the claim could be increased and the time for the hearing could be extended beyond 30 minutes. The second option would be to authorize a JCC to require the use of the expedited process in certain cases. These situations could include cases under a statutorily-specific dollar amount or cases involving compensability and average weekly wage disputes. This option could reduce the "over utilization" of judicial resources.

2. Mediation

a. Lengthen the Time Frame for Mediation -- Due to the variety of factors discussed in the report, the mediation conference almost never occurs within the statutory time frame of 21 days from the date the petition is filed. Other options presented here may help to bring mediation closer to the statutory requirement, but some may still argue that 21 days does not give the parties enough time to investigate their case and gather enough information to be in a settlement posture. Therefore, the Legislature could extend the time for mediation to enable parties to better prepare their case. On the one hand, this could restore some credibility to the statute which is currently ignored and not enforced by judges. On the other hand, the adoption of this change could be perceived as lengthening the time needed to navigate the dispute resolution process.

b. Enforce Requirement to Mediate in Good Faith -- Florida law states that it is "the duty of all who participate in the workers' compensation system . . . to attempt to resolve disagreements in good faith and to cooperate with the division's efforts to resolve disagreements between the parties." Nevertheless, some participants indicated that some parties make no effort to resolve disputed issues at mediation. Thus, an option could be to require mediators to notify the presiding JCC in cases where the mediator believes a party did not mediate in good faith. In these cases, an option could be to require the party not mediating in good faith to attend an additional mediation conference and pay the costs of the first mediation.

c. Reimburse the Cost of Successful Private Mediation -- Because of the length of time associated with scheduling a state-provided mediation, many parties choose to pay for private mediation in order to expedite the process. Were this option implemented, there would be incentives to use private mediators, who are generally able to schedule a mediation much sooner than state mediators due to state mediators' large caseload.

d. Automatically Waive Mediation When Both Parties Agree -- It takes an average of 138 days to get from the filing of the petition to mediation. Most of this delay is related to the volume of cases being mediated and the attendant difficulty in scheduling a date for mediation that is open for all parties. Moreover, many parties know from the outset that their case is not one that is likely to settle at mediation -- e.g., the case hinges on a purely legal issue. Thus, one option to speed up the process would be to automatically waive the mandatory mediation requirement in cases where both parties certify that mediation would be fruitless.

3. Other Options Relating to the Formal Dispute Resolution Process

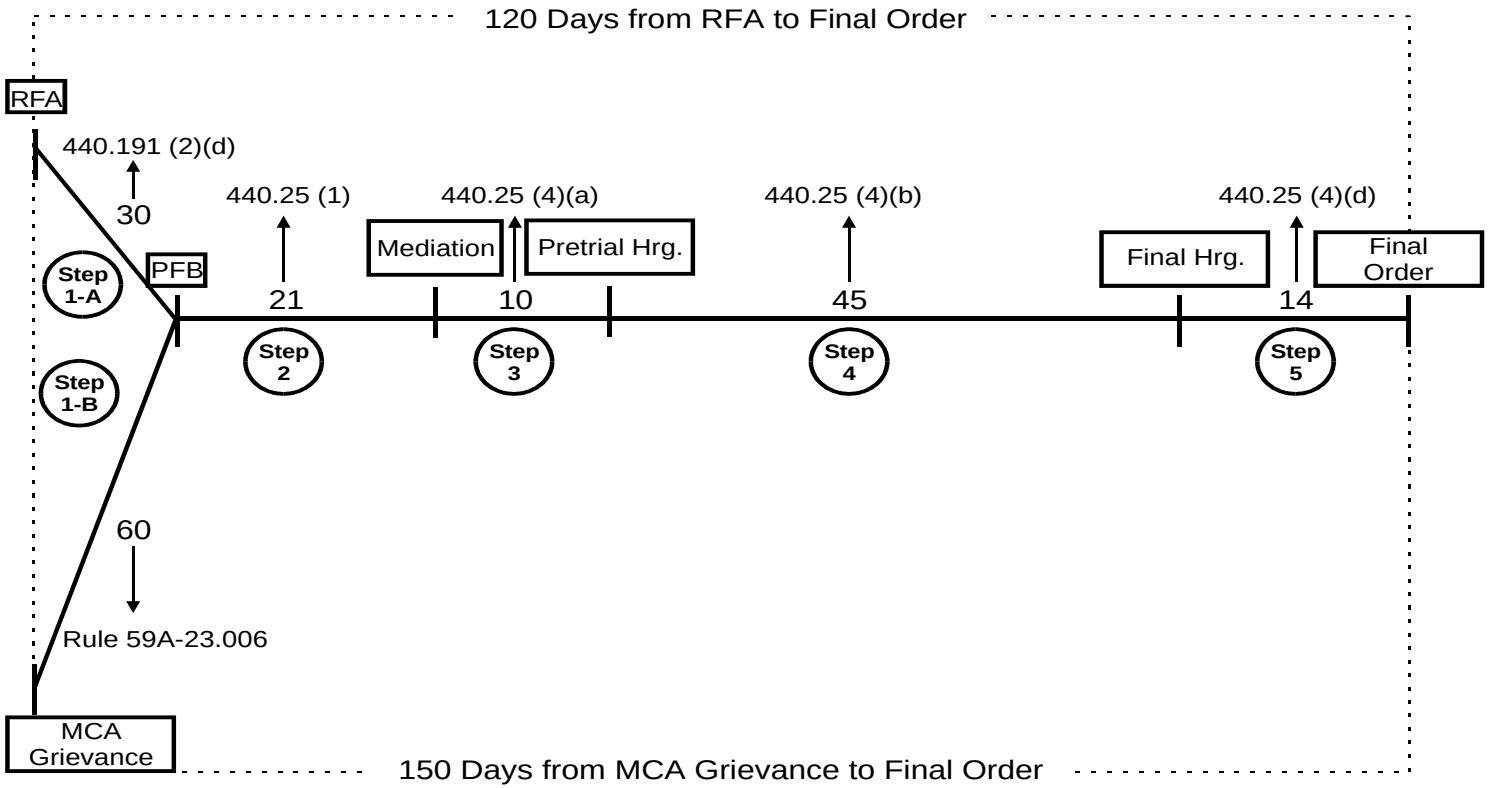
a. Add More Mediators / More Judges of Compensation Claims -- The volume of cases is often cited as a reason for delay in the dispute resolution process. One option could be to hire additional mediators and judges to meet the workload. While this option might enable participants to navigate the process more quickly, it would not address the cause of the increased volume of petitions. Rather, this option might be viewed as a "band aid" approach that could conceivably need to be implemented every few years to keep up with the pace of the increased number of petitions.

b. Require JCC Statewide Nominating Commission to Consider JCC Compliance with Statute -- Section 440.45(2)(c), F.S., provides that the statewide nominating commission shall review the conduct of the judges and determine whether their performance is "satisfactory." The statute does not elaborate on what constitutes satisfactory performance. The Legislature could require the statewide nominating commission, in reviewing a JCC's conduct, to take into account the extent to which the particular JCC adhered to the statutory requirements of chapter 440, such as the ones discussed in this report.

V. Diagrams of Time Lines

A. Statutory Time Line

Workers' Compensation Dispute Resolution Time Line - Statutory



B. Actual Time Line